

Comparative Analysis of Practise of Aspects of Governance in Ghana and Kenya

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Abstract: The practice of effective governance remains elusive to most African countries. Ghana and Kenya despite having had progressive and democratic constitutions have fallen short of upholding it. Out of the numerous challenges faced the two countries still struggle on how key institutions are governed, appointment of senior state officers, rule of law and transparency and accountability. Based on the analysis of the aforementioned challenges, the study revealed that both countries experience widespread impunity in management of governance institutions, blatant abuse of rule of law, lack of transparency and accountability and abuse of power in key government appointments. It recommends constitutional changes in both countries to tame the excessive powers of the Executives, strict adherence to the rule of law, and strengthening of institutions charged with ensuring transparency and accountability. The study draws conclusions and it is expected that the needed steps would be taken to strengthen areas where there are short falls.

Keywords: Ghana, Kenya, Accountability, Transparency, Governance institutions, Rule of Law, State officers

1. Introduction

The term governance and its normative companion, "Good Governance" became known and gained prominence on the African continent in the early 1990's following the inability of most African states to function because of economic recession, institutional failure, poor public administration and crippling levels of external indebtedness.

According to the Encyclopaedia of Governance (2007), the concept refers to two salient trends in political analysis in the African context. The first deals with the perceived crisis of African states, which has led observers to set out a range of models and prescriptions concerning political renewal or less ambitiously, the re-establishment of centralised political order. The second, deals with generalised interest in governance which has strongly shaped academics understandings of state reforms or renewals in Africa, the tools through which many researchers and institutions have made sense of state crisis and shaped a range of lending and policy interventions throughout the continent.

Based on this, democracy, which has to do with giving the power to rule by the people, became the norm in most African countries. In the early 1990s, the Bretton Woods institutions (mainly International Monetary Fund-IMF-and the World Bank) made democratic governance a prerequisite for countries to access financial support. Some of the cardinal conditions were that the countries were to have strong governance institutions, rule of law, transparency and accountability, and repugnant to corruption.

During this period, African countries were experiencing rampant economic crisis and poverty was at its peak. They, therefore, needed to adjust to the new conditions set by the IMF and the World Bank. As a result, many of them began the process of constitutional changes to introduce either in part or fully, the conditions set out these institutions. Ghana, for instance, having had a long rule of military dictatorship under Jerry Rawlings' Provisional National Defence Council (PNDC) from 1981-92, initiated the process of constitutional rule by constituting the National Consultative Assembly leading to the drafting of the 1992 constitution which gave birth to the fourth republic in 1993. Kenya, under one-party rule headed by President Daniel Arap Moi, also underwent a transition from a *De jure* to a *De facto* state.

Because the two leaders oversaw these changes, Rawlings became the first President under the fourth republic, morphing from a military ruler to a civilian one. Though Daniel Moi was a civilian head of state, he continued under the new arrangement having to shed some of his powers.

The study highlighted the germane issues that are peculiar to both Ghana and Kenya, particularly regarding governance of key institution, appointment of senior state/ government officials, rule of law and its application and transparency and accountability.

2. Definition of Governance

The term governance like other social sciences phenomena defies a single definition. Indeed, Ackerman (2017) said, "Governance is an ambiguous term that often substitute for something else. Moreover governance is intertwined with politics." The International Centre for Parliamentary Studies (ICPS) affirms that, "the word has been used generically and the concept has evolved to encompass relationships between stakeholders in a variety of set ups. In the present highly dynamic environment, politically, socially, economically, and culturally, the term means different things in different contexts and the use of an adjective with the word governance has become almost mandatory for it to make any sense at all."¹ Kooiman 1993 also said that governance "is an interactive social- political process which means setting the tone; creating the social political conditions for development of the new models of interacting governing in terms of co-management, co-steering and co-guidance."

Governance according to the OECD is defined as "... the exercise of political, economic and administrative authority necessary to manage a nation's affairs."² From the ongoing, governance, one can say that is the practice of managing all activities relating the affairs of a given state. Generally, it is acknowledged that for governance to thrive certain aspects must be incorporated by the actors involve anything short of this does not fit what governance seeks to achieve

3. Why Ghana and Kenya

From the aforementioned, both countries share similar trajectory at political reforms based on the Bretton Woods Institutions recommendations, with Ghana having had uninterrupted twenty-seven (27 years) year rule under the fourth republican constitutional rule and successively alternated change of governments from ruling government to opposition and vice versa. Kenya promulgated a new constitution in 2010 despite having experienced post-election violence in 2008 that nearly plunged the country into a civil war. A level of political stability has been maintained since then.

Further, the first Presidents of both countries were founding fathers of the Organization of African Unity (OAU). Presidents Kwame Nkrumah and Jomo Kenyatta were both members of the Pan African movement that agitated for the independence of the African nations (Scheepers 2017). Historically, both countries share a common colonial history, as they were both under the British colonial administration until independence in 1957 for Ghana and 1963 for Kenya.

On the tourism front, While Kenya, according to the World Travel and Tourism Council (2019) report, had tourism contributing to 8.8 per cent of its GDP making it third-largest tourism economy in Sub-Saharan Africa after South Africa and Nigeria (World Travel & Tourism Council 2019), Ghana's own is at 5.5 per cent (Knoema 2018). While Kenya is well known as a tourism hub in Africa, Ghana through 'The Year of Return' is making inroads into the continental tourism sector and might have a chunk of its GDP figures moving up through tourism.

Both countries operate a visa-free cooperation framework owing to strong bilateral ties between them. This is further cemented by an exchange of visits by their current Presidents either through quasi or state visits. President Uhuru Kenyatta was in Ghana in 2015 as the Guest-of-honour at Ghana's Independence Day celebration while President Akufo-Addo visited Kenya for the Africa, Caribbean and Pacific Conference in 2019.

Just like Siamese twins, Kenya and Ghana have both had Presidential electoral petitions handled by their respective apex courts making them a toast on the African continent that when there is election-related conflict, the best place to have it resolved is through a judicial process rather than the barrel of the gun.

4. Methodology

The paper was conducted as a desk study and the authors relied on secondary data, analysis of secondary information, documenting and examining of field reports in both Ghana and Kenya, news materials, academic literature, books and research findings. The emphasis was on governance dimensions namely; governance of key institutions, appointment of senior state officials, rule of law and transparency and

¹ ICPS definition of Governance: <http://www.parlicentre.org/Governance.php> accessed on 17th January 2020

² OECD Glossary of Statistical Terms: <https://stats.oecd.org/glossary/detail.asp?ID=7236> accessed on 17th January, 2020

accountability. The study professes some recommendations and drew conclusions based on the analysis discussed.

5. The Case of Ghana and Kenya

Ghana has had a chequered history when it comes to its governance right from independence, being one of the earliest countries to have had independence south of the Sahara since 1957. It went through a series of military coups, the longest being from 1981 to 1992 when a new constitution was drafted ending military interventions on the governance space for the past 27 years. Kenya, however, underwent major democratic transformations since it got independence in 1963. Even though it did not change the independence constitution, several amendments were made to take into account the changes that were taking place in the field of public governance globally. The main constitutional change however came in 2010 when it ushered in a new constitution, marking the birth of a new constitutional republic.

5.1: Governance of key institutions

Key institutions of Governance are institutions that help the government in implementing its policies for the betterment of the state. They include amongst others; the arms of the government, independent government bodies and the state owned media which usually publicises government programmes to the populace.

Damndijav et al (2013) define institutional failure as 'lack of credible restraints on state actors, particularly the Executive, allowing for excessive discretion in the absence of effective accountability mechanisms'. Hope (2014) also points out that the weak governance institutions lack both the will and capacity to deal with challenging issues and those institutions that were designed to regulate the relationship between the state and citizens are being misused for selfish gains of public officials and private individuals. To this effect, the failure of institutions is blamed on powerful Executive, impunity, ineffective democratic institutions, negative ethnicity and poorly enforced laws.

Ghana's 1992 constitution sets in motion steps that ought to be followed in going about government machinery. On the Executive as an institution for example, Chapter 8 of the 1992 Constitution talks about the President and gives him the authority as the appointing officer for key personalities for governmental agencies, the cabinet amongst others. It further states that there shall be a President of the Republic of Ghana who shall be the Head of State and Head of Government and Commander-in-Chief of the Armed Forces of Ghana (Art. 57, 1).

Most importantly, the members of the Cabinet in Ghana are drawn from Parliament. Article 78 of the Ghanaian Constitution states that 'Ministers of State shall be appointed by the President with the prior approval of Parliament from among members of Parliament.' This is a hybrid system, which many find disturbing because it makes Parliament an appendage of the Executive. According to Frimpong and Agyeman-Budu (2018), this practise "does not augur well for the democracy of the country, in the sense that an over-concentration of power in the hands of an 'uncontrollable' Executive may lead to a democratic dictatorship, which tends to reverse the gains made in our democratic governance experiment".

Aside this, there is one particular phenomenon which is hindering the smooth operation of government machinery in the area of security in Ghana. Ever since the Fourth Republic Constitutional rule was ushered in, no Chief-of-Defence Staff (CDS) of the Army and Inspector General of the Police Service (IGP) has had the opportunity to have stayed in office when the government they served lose power. Mostly, the CDS and IGP lose their office when there is a change of government. This practise makes every CDS and IGP, appointed by the government of the day seen as a loyal member of the party in power. Something that takes away the principle of professionalism that should be the hallmark of the Army and the Police Service in order for them to carry out their mandates.

In Kenya, the formation and work of these institutions are well spelt out in Kenya's Constitution of 2010. While some of these vital government bodies have been functioning well, others have failed to conduct their mandates effectively and led to some of the worst outcomes in the Republic of Kenya; case in point, the Electoral Commission of Kenya's (ECK)³ mismanagement of the 2007 general elections which led to the post-election violence that resulted in massive deaths and destruction of property. In spite of the bad record in the past, Kenya for the first time witnessed an independent Judiciary through the Supreme Court of Kenya, deliver a 'null and void' verdict on the presidential election that was conducted by the IEBC following a petition filed by the opposition party Orange Democratic Movement (ODM) and others.

³ ECK has since been renamed to Independent Electoral and Boundaries Commission (IEBC)

As was the case in Kenya, previously in Ghana in 2012, an allegation of an election mismanagement led to the filing of an election petition in the Supreme Court by the opposition New Patriotic Party (NPP) where the contentious issues were that the declared winner of the said elections was not validly elected President of the Republic of Ghana. The petitioners argued further that the runners-up Nana Addo Dankwa Akufo-Addo, be declared the winner and elected President of Ghana and other reliefs the court may seem necessary to help Ghana's democratic course.

In the opinion of the court, the petitioners did not have a case and maintained the declaration by the Electoral Commission that the President, John Dramani Mahama was the declared winner of the said elections. However, the panel of eminent judges who presided over the case were of the opinion that, elections are won at the polling stations and per the landmark nature of the petition, elections in Ghana would not be the same again.

While Kenya's constitution is very clear on the independence of some of the institutions, little regard has been shown by the Executive, which on many occasions has dismissed or turned a blind eye on unfavourable decisions or directives issued by constitutional bodies. In 2019, President Uhuru Kenyatta refused to gazette the names of the new judges nominated by the Judicial Service Commission (an independent institution) claiming they had integrity issues (Muthoni 2019). Earlier on in 2018, the government had ignored court order directing the Communication Authority to restore news broadcast after a media blackout (Peralta 2018). Currently, the political class in Kenya, led by the President and opposition leader Raila Odinga are in the process of collecting views of the members of the public after receiving the Building Bridges Initiative (BBI) report that recommended amongst other changes; the creation of a Prime Minister's position in bid to address the divisive election process in the country. This is an attempt to water down the constitution of the republic, which has been hailed as one of the most progressive legal documents in Africa (Glinz 2011)

In general, in terms of the institutional framework, both countries have put in place good institutions which are also anchored on the constitution. These institutions play a vital role in service delivery and governance. However, the excessive powers enjoyed by the Executive and the impunity that is widespread in the public sectors of both countries render these institutions powerless and are often subject of political attacks and threats whenever they try to carry out their functions independently (Hanson, 2008). This in effect reduces the trust the members of the public have in them thus hampering their relationship with their key targets that is the citizens. What therefore is required is for the Executive to stop abusing its powers and respect the independence of other institutions and to create a favourable political environment where they can function freely.

5.2: Appointment of Senior State/Government Officials

In the area of appointment of key government officials, Article 70 of the 1992 constitution of Ghana gives the President absolute powers to make the following appointments aside ministers: The Commissioner for Human Rights and Administrative Justice and his Deputies, The Auditor-General, The District Assemblies Common Fund Administrator, The Chairmen and other members of independent commissions amongst others.

Further to that, while some of these appointees enjoy security of tenure, such as the Chief Justice, other Justices of the Supreme Court, the Auditor General, others do not. In most cases with particular reference to Ghana's local government system, Chapter 20 of the Local Government Act, 1993 (Act 462) which has in recent times been replaced by Local Government Act, 2016 (Act 936) of the 1992 Constitution gives the President the power also to appoint Metropolitan, Municipal and District Chief Executives (MMDCEs), majority of whom are his own party apparatchiks. As noted by John Boadu, the National Secretary of the New Patriotic Party, (NPP) "the criterion for the selection of MMDCEs is loyalty. He further added, "Loyalty is key... and it is one of the main criteria" Asiamah *et al* (2019)

Additionally, all heads of parastatals and state corporations tenure in office run conterminously with that of the President. Anytime there is a change of government and President, all those appointed by the existing government lose their jobs. This hence breeds sycophancy and leads to excessive loss of resources, as new appointees need to be trained every time a new government assumes office. A report by the USAID in 2011 affirms this, stating that there is a concentration of excessive powers on the Executive making President's powers to dwarf those of other branches.

A State Officer according to the Constitution of Kenya (Article 260) is defined as 'a person holding a State office' which are further listed as the President, Deputy President, Cabinet Secretary, Member of Parliament, Judges and Magistrates, Member of Commission to which Chapter Fifteen applies, Holding an independent office to which Chapter Fifteen applies, Attorney General, Director of Public Prosecutions, Chief of the Kenya Defence Forces, Commander of a Service of the Kenya Defence Forces, Director General of the National Intelligence Service, and Inspector-General and Deputy Inspectors-General of the National Police Service or an office established and designated as a State office by national legislation. These are senior government officials who are appointed by the President of the Republic of Kenya and most times are political despite constitutional protection their offices enjoy.

While the state officers have to be vetted mostly by the Parliament and their names forwarded to the appointing authority- President- for confirmation, most of the times, their appointments are influenced by political ideologies they hold and to which the side of the government they lean; the ruling party or the opposition. While tremendous effort has been made to ensure that the process of appointing the said officers is free and independent, in the previous governments especially Jomo Kenyatta's and Moi's era, there were no clear checks and balances under the law which restricted the direct appointment of the officers. It is during President Kibaki's second term that things changed especially with the promulgation of the new Constitution in 2010, which ushered in a new era with regards to the appointment of State officers amongst others. Even then-during Kibaki's era- there were occasions where he appointed State officers without having them vetted (Rice, 2008). Under the new dispensation, Parliament, which often approves the nominees or rejects them, usually vets the nominees publicly and members of the public are invited to send in any information they have on the nominees for state offices. The vetting is normally conducted by the relevant committee under which the office falls. This process has also realised great achievements while at the same time suffered setbacks mainly from the Executive which still reserves the power to appoint or reject the nominees forwarded by the vetting body. A successful case is the approval of the nomination of Prof Magoha to the position of Cabinet Secretary in charge of Education which was approved by the Kenyan Parliament in March 2019. In one of the rare and bold moves, the same Parliament rejected the nomination of Miss Mwendu Mwinzi to be Kenya's ambassador to South Korea because of citizenship technicality. According to Kenya's Constitution, an Ambassador is not supposed to hold dual citizenship and that state officers upon appointment or election to the state office should renounce the other citizenship as provided for in the Kenya Citizenship and Immigration Act of 2011 (Owino, 2019).

To sum it up, the appointment of senior government/state officers in Ghana and Kenya is majorly a political affair controlled largely by the ruling party. However in Kenya there have been cases where the nominees do not meet the constitutional requirements such as the two-thirds gender rule but they still get approved by the Parliament (Kimani 2017, Ombur 2018). There is no independence when it comes to the appointments, only rewarding of party loyalty and interests. This in effect reflects the overall governance impact on government as some of these nominees sometimes don't perform according to the expectations and end up getting involved in scandals which eventually lead to their resignation (Richardson, 2015) or dismissal from the offices they hold (Wafula, 2019).

5.3: Rule of Law and its Application

Ghana's quest to uphold the rule of law dates back to the pre-colonial period. The Bond of 1844 for instance was a case in point by the citizenry to resist dictatorial rule of the British colonial Administration. All the republican constitutions from the first to the current fourth republic from 1957-to-date all had rule of law enshrined in them. According to Frimpong and Agyeman-Badu, (2018), the rule of law is the most fundamental tenet of constitutionalism. Article 12 of the Ghanaian constitution talks about fundamental rights and freedoms stating in subsection one that, *'the fundamental human rights and freedoms enshrined in this chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them, by all-natural and legal persons in Ghana, and shall be enforceable by the Courts as provided for in this Constitution'*. Moreover, Article 33 of the 1992 Constitution of Ghana and Order 67 of the High Court Rules have provided suitable grounding for the protection of fundamental human rights.

Though the laws are clear and people are expected to enjoy their rights, the justice system in Ghana is not only slow, but also expensive and sometimes harsh. Initiation of a judicial process through the wrong processes or having inadequate funds to sustain even the most legitimate cases could make a person be denied their day in court. This could explain why some frustrated people are seeking justice outside the law. According to a study conducted in Tema by Kwofie (2018), an ordinary Ghanaian cannot afford to file a case in the High Court.

It is an undeniable fact that Ghana enjoys a good record on the rule of law ever since democratic rule was instituted (except in the case of prisoners whose liberties are curtailed). However, there is a fundamental problem to the full implementation of the principle of equality before the law. In most cases, the law is applied depending on which political party is in power. The USAID (2011) report affirmed further that, "while presidential appointees, such as the Minister of Justice/Attorney General, may have the constitutional mandate to uphold the law, they face political incentives not to prosecute members of their party."

In Kenya, the rule of law and its application in governance has been through changes in the subsequent governments since independence. Under the first President Jomo Kenyatta, the rule of law was often violated to suit the wishes of the ruling elites. During his reign as President, many opposition figures were arrested and detained mysteriously. Others like Tom Mboya and J.M. Kariuki were also murdered in cold blood with fingers pointing at the government as the main perpetrator of the killings.

After Kenyatta, came Moi who vowed to follow in his predecessor's footsteps under the *Nyayo*(footsteps) philosophy. Under his presidency, he oversaw the amendment of Section 2A of the constitution thus making Kenya a one-party state (Ross 1992). He also clamped down on opposition leaders and civil rights activists by arresting and detaining them without trial. The trend of violation of the constitution was the same under President Kibaki's reign and now is under President Uhuru.

Mutua (2001) argues that despite being portrayed as a beacon of hope in Africa, human rights violations are still trademarks for the Kenyan government. He points out that Kenyan leaders who took power after independence turned into despots and authoritarian leaders despite the independence constitution allowing for parliamentary democracy. In his conclusion, Mutua stated that, "since independence in 1963, the Presidency has abrogated, through both legal and illegal means, the constitutional coequality and separation of powers of the three branches of the state."

In spite of the widespread violations of the rule of law by the government and senior government officials, there have been cases of compliance with directives on the side of the government, pointing to a better future. The 2017 Supreme Court ruling on Presidential election is one case which has been hailed internationally as a demonstration of respect for the rule of law in Kenya (Tamura, 2017). According to IDLO (2017), "The ruling by the Kenyan Supreme Court and the decision of the country's political leaders to abide by it is an encouraging sign of respect for the rule of law."

An assessment of the rule of law and its application in Kenya, therefore, reveals a mixture of violations and compliance by mainly the Executive. The difference and decision to comply with or defy the rule of law depends on the weight of the subject matter. If the matter is particularly pushed by the government like the digital registration of people dubbed as *Huduma* number, the Executive is likely to defy the court order for example if it is against the action (Mungai 2019). Where the matter is not serious and has low priority for the government, it will tend to comply with the dictates of the rule of law (Kiplagat 2019). In Ghana, the case is different, as the rule of law has in many occasions, been upheld under the current dispensation.

5.4: Transparency and Accountability

Florini (2007) opined, "Transparency is the degree to which information is available to outsiders that enables them to have informed voice in decisions and/or assess the decisions made by insiders." Transparency International defines accountability as "the concept that individuals, agencies and organisations (public, private and civil society) are held responsible for reporting their activities and executing their powers properly". It also includes the responsibility for money or other entrusted property⁴. Schedler (1999) as cited in Githinji and Holmquist (2012) also offers a definition stating that it 'is the requirement that public servants both inform the public about what they are doing and face sanctions when their activities do not conform to the law or popular expectations'. They further suggest that the first half of that definition is that of transparency while the second half is accountability.

Putting the above together, Danso, (2017) argued that "Transparency and accountability are two buzzwords in development theory and practice." He is of the view that the two concepts are closely related and involves giving people access to relevant information, encouraging fairness and promoting the active participation of local people in any public endeavour.

A different definition is however offered by the Transparency and Accountability Initiative stating that transparency is when public officials act visibly, predictably, and understandably to promote participation and accountability while accountability is when public officials are answerable for their actions and that there is remedy when duties and commitments are not met⁵. Transparency International also offers a definition stating that transparency means 'shedding light on shady deals, weak enforcement of rules and other illicit practises that undermine good governments, ethical businesses and society at large'⁶.

Ever since Ghana ventured into the fourth republic, transparency and accountability have been central in the conduct of democratic governance. To this effect, Ghana put in place the Right to Information Bill that took almost a decade to be passed. However, in March 2019, the bill was passed by Parliament and subsequently received presidential assent in May the same year. As the Preamble to the act reads, "the purpose of the bill is to, provide for the implementation of the constitutional right to information held by any public institution and to foster a culture of transparency and accountability in public affairs". (Shaban 2019)

⁴ Transparency International definition: <http://ti-defence.org/wp-content/uploads/2019/03/DCI-2019-final-QMA-published-13032019-1.pdf> (Accessed on 31st December 2019)

⁵ Transparency and Accountability Initiative: <https://www.transparency-initiative.org/blog/1179/tai-definitions/> (Accessed on 27th December 2019)

⁶ Transparency definition: <https://www.transparency.org/what-is-corruption> (Accessed on 27th December 2019)

Further, as a way of protecting the public purse and to nip corruption in the bud, the Office of the Special Prosecutor, with its subsequent bill establishing it was passed into law. According to the Afrobarometer (2019) report on Ghana, a majority of the citizens (73 per cent) want corrupt officials prosecuted and jailed with an earlier report by the same institution in 2014 revealing that Ghanaians perceive widespread corruption among various categories of public officeholders. This includes the President and officials in his office, Members of Parliament, government officials, local government councillors, Ghana Revenue Authority officials (or tax officials), the Police, Judges and Magistrates, and District Chief Executives (Attoet al 2014). However, the office of the Special Prosecutor has failed to live up to this expectation. In retrospect, corruption has become more rampant and endemic amongst Ghanaians (Bediako, 2018)⁷

Corruption is so endemic that it took the effort of investigative journalists Anas Aremeyaw Anas and Manasseh Azure to expose corruption in the Judiciary. While the work of Anas led to the dismissal of Judges (BBC report 2015), Manasseh's work exposed President John Mahama to have received a Ford expedition vehicle from a Boukinabe contractor and in return gave him a road construction contract⁸. There was also the corruption exposé dubbed 'Number 12' on the football administration and the Savannah Accelerated Development Authority (SADA) corruption leading to the incarceration of some officials (Teye 2018). In general, despite these exposures, corruption continues to be exposed in the Ghana's media buttressing the unfettered transparency role the media plays in holding public officials accountable to the dictates of the constitution.

Whereas in Kenya, despite having institutions and legal framework that ensure transparency and accountability in public governance, very little has been realized. In fact, the challenge of corruption has grown from bad to worse during the reign of President Uhuru Kenyatta. Mega corruption scandals have rocked the government leading to the arrest of senior government officials even as experts now warn that almost a third of Kenya's budget get lost through corruption (Miriri, 2016). A report by the Kenya Human Rights Commission (2018) cites lack of political will and the unwillingness of the offices charged with prosecuting corrupt cases as one of the reasons the war against the vice has not succeeded. Otieno (2019) also adds that the government is not committed to ensuring there are proper reforms but only embraces it for appearance purposes because deep reforms will take off power from the ruling elites and change the nature of Kenya's politics which is mainly dominated by the group.

Lack of transparency and accountability, therefore, has continually ensured the growth of corruption and related vices even amidst government attempts to create reforms. As a result, corruption is deeply rooted and persistent in Kenya because of the lack of serious accountability effort. The country is additionally plagued with issues such as political violence, land injustices and impunity despite efforts by the political class to bring about positive changes. Consequently, the country's corruption perception has continued to worsen, having been ranked position 144 out of 180- making it one of the most corrupt countries in the world (Transparency International, 2018).

The institutions that have been created to investigate and prosecute corruption cases such as the Ethics and Anti-Corruption Commission (EACC), the Directorate of Criminal Investigations (DCI) and Office of the Director of Public Prosecutions (ODPP) have been turned into tools for political witch-hunt and targets of politicians seeking to gain popularity amongst their constituents. They are thus unable to operate independently thus jeopardising the efforts to slay the corruption dragon in the country.

As elaborated by Githinji and Holmquist (2012), accountability has two dimensions: horizontal- which focuses on the checks and balances between government branches- and vertical- which is between the state and its citizens. They further argue that vertical accountability depends on citizens defending the national interests and goals of the nation and that in the absence of such, personal interests prevail and politicians remain unaccountable. In essence, accountability has to be demanded by the citizens and in both countries, the citizens are less informed on their role in promoting effective governance and the institutions charged with ensuring the same are held hostage by the powerful government officials. Hope (2014) concludes that corruption is endemic in Kenya because the institutions that regulate the relationship between state and citizens are used for selfish interests by public officials and corrupt individuals.

In summary, it is fair to say that Ghana and Kenya are yet to fully achieve the level of transparency and accountability that ensures and promotes good governance. In Kenya for example, the institutional framework that promotes transparency and accountability is still weak and the powerful and corrupt have taken hostage

⁷ Prof Bediako Speech: <https://vvu.edu.gh/index.php/stories/blog/210-corruption-is-endemic-in-ghana-vice-chancellor> (Accessed on 31st December 2019)

⁸ Report on President Mahama corruption allegation: <https://chraj.gov.gh/wp-content/uploads/2019/04/CHRAJ-REPORT-FORD-GIFT.compressed.pdf> (Accessed on 31st December 2019)

those holding offices that deal with this dimension. This continues to happen despite having in place a devolved system of governance, which is an important aspect in countering lack of transparency and accountability (Hope 2014). As a result, the government of Kenya is now a playground of corrupt individuals and bureaucrats who conduct their businesses with impunity knowing they enjoy protection from the elites. The issue is well captured by Rev. Dr Timothy Njoya's words- as quoted in Kenya Human Rights Commission report, (2018zaq1), stating that in Kenya, 'what is called corruption is an institutionalized reward system'.

6. Recommendations

From the above discussed, the following recommendations are professed. It is not for window dressing and the need to please the outside world that the rule of law was enshrined in the constitutions of the two countries. Constitutions are living documents and should be functional. Thus, efforts must be made to impartially interpret and enforce the tenets of the rule of law as that will ensure that the constitution is protected from those seeking to violate it.

Looking at the geographical location of both countries and their level of democracy and governance, one can say that they can both be used as pivot to spur constitutional change within their regions. Ghana ranks highly in terms of practice of democracy and governance compared with her regional neighbours in Economic Community of West African States (ECOWAS), while Kenya leads the East African Community (EAC) member states. As such, both governments and the citizens should ensure that the policies put in place are respected and entrenched in their constitutions.

Added to these, both countries should consider a review of their constitutions and take away excessive powers given to the Executive to prevent unnecessary and unconstitutional interference in the functioning of other independent government institutions. Ghana for a example should allow the Attorney General have a fixed tenure to enable him or her discharge his or her duties independently. These proposed changes should be included in the constitutional review processes in Ghana. Kenya has already begun discussions around constitutional review with the main aim of addressing the excessive Executive powers as was recommended by the BBI report.

7. Conclusion

Comparatively, one can say that corruption is a problem on the African continent if good governance is to thrive. Ghana and Kenya cannot attain the level of development they want for their citizens, taking into consideration high levels of corruption in both countries and how big shots are let off the hook when found culpable.

For transparency and accountability to thrive, media freedom is necessary so that corrupt officials can be exposed. Both countries need to do more in promoting transparency and accountability as media freedom is still wanting particularly in Kenya. According to a report published by Freedom House in 2019, Ghana had an aggregate score of 83 out of 100 while Kenya had a score of 48. This means that there was still a lot to be done in Kenya since media freedom is an important contributor to good governance.

Both countries have the needed legal frameworks that have created good institutions of governance. However, there is an excessive concentration of power in the Executive in both countries, hindering their independence. As a result, they cannot function properly as required by the law, challenging the assertion by President Barack Obama that 'Africa needs strong institutions, not strong men'⁹.

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